Missouri Medical Malpractice Joint Underwriting Association

Minutes for the Meeting of
February 24, 2004

Location: Room 500 of the Truman State Office Building
Jefferson City

Time: 10:00 a.m. to 5:15 p.m.

Attending: Bill Turley, Chairman [Shelter Insurance Companies/NAII]*
(Board) Paul Blume [AIG/Unaffiliated Companies]
Craig Kjellberg [State Farm Insurance/Unaffiliated Companies]
Karl Koch [Savers Property & Casualty Ins. Co./the Alliance]
Dave Monaghan [American Family Insurance/NAII]
Dennis Smith [Missouri Employers Mutual/AIA]
Patty Williamson (*via teleconference*) [Uhlemeyer Services Inc./AIA]

(MDI Staff) Linda Bohrer, Director, Division of Market Regulation
Kevin Jones, General Counsel
Susan Schulte, Chief, Property & Casualty Section
Mark Doerner, Senior Counsel, P&C Section

(Presenters) Jay Benanav (*via teleconference*)
Steve Novak (*via teleconference*), Palmer & Cay
Jim Vaccarino, Marsh
Jean-Paul Rebillard, Marsh
John Puetz, Marsh
Sheryl Manger, Marsh
Andrew Teigen, Marsh
Hoyt Marquis, Aon Risk Services, Inc.
Tom Redel, Aon Risk Services, Inc.
Theresa Bourdon, Aon Risk Consultants
Pam Morrow (*via teleconference*), Cambridge Integrated Services, Inc.
Sam Tursich (*via teleconference*), Cambridge Integrated Services, Inc.
Kathleen M. Pinkham, A.J. Gallagher & Co.
Joseph Moody, Hospital Services Group

* Material in brackets following the names of Board members indicate the insurance companies they work for and then the insurance industry trade groups which they are representing under Section 383.175, RSMo.

Ron Poindexter, Hospital Services Group

(Audience) Fred Brown, Missouri State Medical Association
Bonnie Bowles, Mo. Ass'n. of Osteopathic Physicians and Surgeons
Amy Hamacher, Missouri Insurance Coalition

The meeting was called to order at approximately 10:00 a.m. by Chairman Turley, who asked the members of the audience and Department staff members to introduce themselves. He then asked Jay Benanav and Steve Novak, who were participating via teleconference from Minnesota, to discuss the Workers' Compensation Reinsurance Association (WCRA) they operate in that state. The WCRA was established in 1997 to provide reinsurance to insurers in the primary market. Basically, it is a mandatory reinsurance mechanism. The WCRA is run as a private reinsurer, not a state agency (in part to avoid having its assets diverted to non-insurance uses). It is exempt by law from federal taxation. Over its history, the WCRA has returned more money in dividends than it has taken in through premiums. The two pointed to a study of the WCRA done by Milliman & Robertson that was undertaken to determine whether the WCRA was actually providing a benefit to the market.

Next, the Board heard a presentation from Jim Vaccarino and the other personnel from Marsh on the medical malpractice JUA operations they manage in several other states. In Jim's opinion, residual market operations have the capacity to help offset the some of the negative effects of the cyclic fluctuations in the voluntary insurance markets. When done correctly, rather than hurting the voluntary markets, residual markets can actually enhance them. In the area of medical malpractice insurance, they can help by giving health care providers "predictability" when it comes to premium rates. By assisting providers in this way, they also help the general public by maintaining access to health care.

While residual markets have historically been considered "step-children" of voluntary markets, they needn't be so. It is possible to have state-of-the-art operations in areas like forms, financing, administration, etc. His goal is to offer a "comparable" product to what is offered in the voluntary market, as opposed to a "competitive" product. This requires coordination among the various participants, such as the actuaries, database managers, auditors, accounts receivables, finance, etc.

Claims handling is critical; it must be performed competently or the operation won't be a success. Marsh's team uses medical malpractice insurance professions, such as doctors, nurses and attorneys with med mal experience. They never settle a claim unless the claim is legitimate and the offer is reasonable. They refuse to settle nuisance cases, even though doing so might seem convenient or economical, because, in the long run, this approach doesn't work.

Loss control is also important. Poor doctor/patient relationships, unexpected medical outcomes, or unexpected patient expenses lead to litigation. To counteract these, doctors

need to establish rapport with the patients and they need to keep good records (to explain any deviations from practice norms).

Marsh manages six of the nation's state medical malpractice JUAs and 83 other risk pooling mechanisms. They have high standards, and undergo three separate audits each year.

Mr. Vaccarino then went on to describe Marsh's experience with the New Hampshire and Rhode Island JUAs. A key point was that it is possible for a JUA to work its way out from under an initial deficit to a substantial surplus, over time. As the insurance cycle softens, higher-risk doctors leave the JUA to seek cheaper coverage elsewhere, while lower-risk doctors often remain, allowing the JUA to build surplus that comes in handy when the cycle hardens. Their philosophy is to avoid assessments for "accounting" deficits, and would only recommend one if the JUA was experiencing an actual "cash" deficit.

Regarding investments, they take a conservative approach, investing only in fixed-income securities.

He discussed the potential benefits of a JUA offering "modified claims-made" policies, which charge the same amounts as normal claims-made policies, plus an additional amount (say 3%) which is credited toward the payment of tail coverage for the doctor for the future. The JUA retains the credited amounts should the doctor leave the JUA prior to retirement.

He also discussed Marsh's recent experience in Nevada, which reflects Marsh's ability to take on difficult market conditions and produce a healthy JUA. They do not believe tort reforms are necessary for the operation of a successful JUA.

After breaking for lunch, the Board returned and heard from the various members of the Aon team. Hoyt Marquis and Tom Redel indicated that Aon provides a range of services similar to those of Marsh. They too offer medical malpractice solutions. While they administer residual market operations in other states, they admit that none of them are medical malpractice residual markets. However, as their actuary Theresa Bourdon pointed out, they have considerable experience helping self-insured clients manage their medical malpractice exposures. With 20 credentialed actuaries on staff, after Milliman and Tillighast, they have the largest actuarial pool in the country, and advise clients with over $3 billion in medical malpractice exposures. They are known for their published studies regarding the nursing home industry, and they understand the various trends facing the medical malpractice environment.

Theresa said the first step with the Missouri JUA would be to develop a rating plan, using Missouri data if available. Then, the task is to "monitor, monitor, monitor." The nuances of the local market environment are important. The medical malpractice industry's current problems stem from an under-pricing of the product in prior years. Tort reform can help. The size of the JUA is not a problem, per se, although a larger JUA is more

predictable. Whatever the size, the best plans have good data and set reserves correctly. Her advice would be to focus on the specialties hit hardest by the current availability and affordability problems.

Kathy Pinkham, of A.J. Gallagher, with which Aon has partnered for this proposal, discussed underwriting, reporting, and billing. Her operations function as administrators for insurance companies. From her perspective, a crisis exists for doctors in obtaining quotes timely in order to find coverage without gaps, in the amount charged for tail coverage and in the cost of tail coverage due to mid-year premium increases.

Pam Morrow and Sam Tursich of Cambridge Integrated Services, Inc., a subsidiary of Aon, discussed their operations as the largest TPA in the country. They have consulted with other state JUAs (New Hampshire and South Carolina) regarding reserve settings. They employ nurses to do detailed claims investigations. Their other claims people are lawyers with 20+ years of experience, who do day-to-day tracking of litigation, in order to avoid letting litigation get out of control. Their settlement philosophy is dictated by what the client wants to do, but they basically believe in being aggressive but settling where it is reasonable to do so. They consider mock trials where appropriate, to gauge the "sympathy factor" certain plaintiffs will engender in juries.

Hoyt Marquis discussed with the Board the philosophy of seeking assessment payments on a year-by-year basis, in order to avoid allowing the size of a deficit to grow. This could be a problem if, when it comes time to demand the assessment, various carriers argue that they do not owe portions of their assigned share. The Aon team indicated it might take 30 to 60 days to develop rates for the plan. They charge 15% of premium to run such plans.

Lastly, the Board heard from Joe Moody and Ron Poindexter of the Hospital Services Group, which is affiliated with a holding company owned by Missouri hospitals. They have all the services the JUA would need except those they use outside consultants for, to wit: actuarial services, Tillighast, legal services, Carson & Coil, and reinsurance, Guy Carpenter. Regarding the handling of specific cases, they have a network of 8 to 10 law firms around the state they typically use. Because of the amount of business they provide, they have favorable fee structures with these firms. They strive for a reputation of being fair, but willing to go to court.

In their opinion, JUAs function best as markets-of-last-resort. They recommend the Board require declinations before providers are allowed access to the JUA. The South Carolina JUA is an example of one that has run up a huge deficit. They would anticipate a surcharge on providers insured by the JUA to reflect the likely adverse selection the JUA will encounter.

They plan to be around for years and to stick with what they know best. They haven't lost any member hospitals over time and have had stable rates. Other, multi-state carriers have to achieve return-on-investment targets not faced by Hospital Services Group.

After the presentations, the Board members discussed modifications to the Plan of Operations. They developed a list of basic underwriting guidelines to be added to the Plan. The meeting was adjourned.